



JIM McDONNELL, SHERIFF

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



A Tradition of Service

January 20, 2015

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AN AGREEMENT WITH CARFAX FOR POLICE CRASH
ASSISTANCE AND INVESTIGATIVE DATA SHARING PROGRAM
(ALL DISTRICTS) (3 VOTES)**

SUBJECT

The Los Angeles County (County) Sheriff's Department (Department) seeks approval of an Agreement with CARFAX, for participation by the Department in CARFAX's Police Crash Assistance and Investigative Data Sharing Program (Program).

IT IS RECOMMENDED THAT THE BOARD:

1. Delegate authority to the Sheriff to execute the attached Investigative Tools Enrollment Agreement (Agreement) with CARFAX, commencing upon acceptance by CARFAX, and continuing indefinitely until terminated by either party.
2. Delegate authority to the Sheriff, or his designee, to terminate the Department's participation in CARFAX's Police Crash Assistance and Investigative Data Sharing Program at its sole discretion with 30 calendar days advance written notice to CARFAX.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the Agreement will allow CARFAX to provide the Department with the ability to search motor vehicle accident reports in other jurisdictions in exchange for the Department sharing of certain motor vehicle accident report data sets with other law enforcement agencies through the CARFAX system, and will allow CARFAX to use the motor vehicle accident report data sets in its products and services provided to the public.

The Agreement will allow the Department to enhance its technological and investigative resources to be more effective in solving crimes. The Agreement provides the Department with unlimited access to the CARFAX Vehicle History Service (VHS), including vehicle history reports and other investigative tools that will help the Department uncover fraud, dates and locations of recent events, unusual incident patterns, and dangerous pre-existing vehicle damage. The CARFAX Vehicle Identification Number Alert Module is capable of notifying Department investigators of any activity related to vehicles under investigation. Mobile access to vehicle history and access to an investigative trainer are also included in the Program.

The Department's research indicates that the unique protection and service features provided by CARFAX are not matched by any other service provider currently available. The VHS is provided to the Department at no cost to the County in exchange for the Department's provision of certain motor vehicle accident report data sets to CARFAX. The Department's data sets will be electronically uploaded to the CARFAX system for use by other law enforcement agencies, and may be provided to the public as part of the CARFAX products and services.

Implementation of Strategic Plan Goals

The Agreement supports the County's Strategic Plan, Goal 1, Operational Effectiveness/Fiscal Sustainability. The Agreement will enhance the Department's technological ability to conduct comprehensive investigations to better serve the residents of the County.

FISCAL IMPACT/FINANCING

None. CARFAX provides all of the services described at no cost to the County.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Agreement shall commence upon acceptance by CARFAX and continue until terminated by either party with 30 calendar days advance written notice to the other party. The Agreement is governed under the laws of the State of California and venue of any action under the Agreement shall be exclusively in the County. The County agrees that CARFAX's liability for damages, regardless of the form of action, shall not exceed \$1,000. The Agreement contains express mutual indemnification for liability arising out of CARFAX's improper use of the data and the County's improper use of the VHS or the VHS reports.

The Agreement is drafted utilizing CARFAX's proprietary Investigative Tools Enrollment Form.

The Chief Executive Office's Risk Management Branch has reviewed and concurs with the provisions relating to insurance and indemnification.

County Counsel has approved the attached Agreement as to form.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact on current Department operations and services.

CONCLUSION

Upon Board approval, please return three adopted copies of this Board letter to the Department's Contracts Unit.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McDonnell". The signature is stylized with a large, looping "J" and "M".

JIM McDONNELL

Sheriff

JM:AF:af

Enclosures

INVESTIGATIVE TOOLS ENROLLMENT FORM LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

Official Agency Name (must provide FULL name): **COUNTY OF LOS ANGELES by and through the LOS ANGELES COUNTY
SHERIFF'S DEPARTMENT**

Agency ORI Number: ____ - ____ - ____ - ____ - ____

Name of Chief of Police or Sheriff: _____

Number of Sworn Officers: _____

Address: _____

City: _____ State: _____ Zip: _____

Estimated number of motor vehicle accident reports per year: _____

Does the Agency want to participate in CARFAX's Investigative Data Sharing Program? This program allows the Agency to search motor vehicle accident reports in other jurisdictions in exchange for sharing its motor vehicle accident reports with other law enforcement agencies. Contact your CARFAX representative if you need more information. ☐ Yes ☐ No

By signing below, I represent that I am an authorized representative of the Agency identified above (the "Agency") and have read and agree, on behalf of the Agency, to the terms and conditions below:

Signature: _____

Title: _____

Printed Name: _____

Date: _____

Send completed form to: Elena Castor | EMAIL: ElenaCastor@carfax.com | FAX: 866-304-7523

These terms and conditions apply to the Agency's participation in CARFAX's Police Crash Assistance Program (the "Program"). The Agency agrees to provide to CARFAX during the Term (as defined below), via electronic data upload, certain agreed upon data sets of information obtained from motor vehicle accident reports that are collected and maintained by the Agency and that the Agency is permitted to provide to CARFAX (the "Data"). The Agency will not provide complete and actual motor vehicle accident reports to CARFAX. The Agency authorizes CARFAX to use the non-personal information contained in the Data in connection with CARFAX's vehicle history products and services. CARFAX shall not offer to sell or sell the Data online except as included in CARFAX products or services. The Agency understands that CARFAX relies on its sources for the accuracy and reliability of their information, and therefore the Agency will notify CARFAX of erroneous information provided by the Agency to CARFAX. In consideration of the Agency's provision of the Data to CARFAX and commencing after the date that CARFAX receives the first delivery of Data from the Agency, CARFAX will provide the Agency, in accordance with the CARFAX Terms and Conditions set forth on the following page, with a free subscription to use CARFAX's Vehicle History Service to access Vehicle History Reports and to use other investigative tools that CARFAX may offer to participants in the Program from time to time. If the Agency elects to participate in CARFAX's Investigative Data Sharing Program, then the Agency's participation is subject to the CARFAX Terms and Conditions set forth on the following page.

The Agency agrees that its participation in the Program will be effective from the date on which it is accepted by CARFAX and continue until terminated by either party upon thirty (30) calendar days' prior written notice to the other party (the "Term"). In the event of termination of the Agency's participation in the Program, CARFAX may continue to use the non-personal information contained in the Data already acquired by CARFAX during the Term in connection with CARFAX's vehicle history products and services.

CARFAX[®] Terms and Conditions

These CARFAX Terms and Conditions apply to the use by the agency identified on the enrollment form attached hereto (the "Agency") of CARFAX's Vehicle History Service ("VHS") and other investigative tools that CARFAX may offer to participants in CARFAX's Police Crash Assistance Program from time to time (the "Investigative Tools") and the elected participation by the Agency in CARFAX's Investigative Data Sharing Program. These CARFAX Terms and Conditions and the enrollment form to which they are attached together form the agreement between Carfax, Inc. ("CARFAX") and the Agency ("Agreement").

1. **Termination.** In the event of termination of the Agency's participation in the Program (as such term is defined in the enrollment form attached hereto), this Agreement shall also terminate as of the effective date of such termination. CARFAX may terminate this Agreement immediately if the Agency breaches any provision of this Agreement. All provisions of this Agreement which expressly or by their nature are intended to survive any termination of this Agreement shall so survive.

2. **License; Ownership.** Subject to the terms and conditions of this Agreement, CARFAX hereby grants to the Agency a limited, revocable, nontransferable and nonexclusive license to use the VHS to access VHS reports and to use the Investigative Tools for criminal investigative purposes and any other purpose(s) mutually agreed to by the parties ("Permitted Use"). The Agency acknowledges that the VHS, the VHS reports, the Investigative Tools and all intellectual property relating thereto are and will remain the property of CARFAX. In consideration of the license granted to the Agency under this Agreement, the Agency agrees to: (i) use its best efforts to provide to CARFAX, upon CARFAX's request, another copy of any previously provided Data within one (1) business day after such request, and (ii) direct all calls that the Agency receives relating to CARFAX to 1-800-990-2452 or such other phone number designated by CARFAX.

3. **Restrictions on Access and Use; Monitoring.** The Agency shall not: (i) sell the VHS reports or information derived from the VHS reports or the Investigative Tools, (ii) share the username(s) and password(s) issued by CARFAX with any third party (other than with CARFAX-approved third party vendors to facilitate the Permitted Use), (iii) permit the use of the VHS or the Investigative Tools by any third party, (iv) use or permit the use of the VHS or the Investigative Tools in the operation of a service bureau, or (v) use the VHS, the VHS reports or the Investigative Tools for purposes other than the Permitted Use, including for personal or unlawful purposes. Systematic access or retrieval of the VHS report or the information derived from the Investigative Tools, including, but not limited to, the use of "bots" or "spiders," is strictly prohibited. In the event the Agency provides a VHS report or the information derived from a VHS Report or the Investigative Tools to another party, the Agency shall not: (A) provide the VHS report or such information to any party for resale or remarketing in any manner or (B) modify the VHS report or such information in any way. The Agency shall make no representation or provide any warranty to any person or entity regarding CARFAX, the VHS, the VHS reports, the Investigative Tools, or the information derived from the VHS reports or the Investigative Tools, whether written or oral, that is inconsistent with the provisions of this Agreement and the information contained on the VHS reports or the Investigative Tools (including all disclaimers). CARFAX reserves the right to monitor the Agency's use of the VHS, the VHS reports and the Investigative Tools to ensure compliance with this Agreement and prevent fraudulent use. CARFAX further reserves the right, in its sole discretion, to discontinue, modify or terminate any aspect of the Investigative Tools at any time. The Agency's obligations under this Section 3 shall survive any termination of this Agreement.

4. **Investigative Data Sharing Program.** If the Agency elects to participate in CARFAX's Investigative Data Sharing Program (the "Data Sharing Program"), then the provisions in this Section 4 shall apply. The Agency authorizes CARFAX to make available to other Data Sharing Program participants all of the Data that the Agency provided to CARFAX in connection with the Program. CARFAX will provide the Agency with username(s) and password(s) to access a database (the "Database") containing copies of motor vehicle accident reports that were provided to CARFAX by current Data Sharing Program participants (collectively, the "Shared Reports"). The Agency will ensure that only authorized representatives of the Agency are given the Agency's username(s) and password(s) to access the Database. Subject to the terms and conditions of this Agreement, the Agency may search the Database and use copies of the Shared Reports, the Database search results (the "Search Results"), and any information contained in the foregoing for criminal investigative purposes only. Subject to section 9, the Agency shall not, and shall not permit others, to directly or indirectly: (i) provide, offer, distribute, sell or resell any of the Shared Reports, the Search Results, or any information contained in the foregoing to any third party, or (ii) search the Database or use any of the Shared Reports, the Search Results, or any information contained in the foregoing for purposes other than criminal investigative purposes (including personal or unlawful purposes). THE DATABASE, THE SHARED REPORTS, THE SEARCH RESULTS AND ALL INFORMATION CONTAINED IN THE FOREGOING ARE PROVIDED "AS IS" AND "AS AVAILABLE." The Agency agrees that CARFAX's liability for damages relating to or resulting from the Agency's participation in the Data Sharing Program, regardless of the form of action, shall not exceed one thousand dollars (\$1,000.00). The Agency may terminate its participation in the Data Sharing Program upon thirty (30) days prior written notice to CARFAX. CARFAX reserves the right, in its sole discretion, to modify or terminate the Data Sharing Program at any time.

5. **Agency Account.** The Agency will ensure that only authorized representatives of the Agency are given the Agency's username(s) and password(s) to use the VHS and the Investigative Tools.

6. **Disclaimers; Limited Warranty.** The Agency acknowledges that CARFAX is collecting data from public records and other sources for use in the VHS, the VHS reports and the Investigative Tools and that this data may contain errors and omissions. CARFAX does not guarantee the correctness or completeness of the VHS, the VHS reports, the Investigative Tools or any information contained therein, and CARFAX will not be liable for any loss or injury caused, in whole or part, either by its negligence or circumstances beyond its control in procuring, compiling, collecting, interpreting or making available the VHS, the VHS reports or the Investigative Tools. The Agency understands that not all information is available for all states and that CARFAX does not have access to some information that may be available to other parties. The Agency also understands there may be a period of time between receipt of certain information by CARFAX and its inclusion of such information into the VHS, the VHS reports or the Investigative Tools. The Agency acknowledges that the VHS, the VHS reports, and the Investigative Tools do not provide any conclusions regarding the condition of any vehicle, and the Agency assumes full responsibility with respect to its decisions and transactions using the VHS, the VHS reports and the Investigative Tools. CARFAX MAKES AND THE AGENCY RECEIVES NO WARRANTIES, EXPRESS OR IMPLIED, AND CARFAX EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CARFAX DOES NOT GUARANTEE THAT THE VHS OR THE INVESTIGATIVE TOOLS WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS IN FUNCTIONING. IN PARTICULAR, THE OPERATION OF THE VHS OR THE INVESTIGATIVE TOOLS MAY BE INTERRUPTED DUE TO MAINTENANCE, UPDATES, OR SYSTEM OR NETWORK FAILURES. CARFAX, ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS DISCLAIM ALL LIABILITY FOR ANY LOSS OR DAMAGES CAUSED BY ANY SUCH INTERRUPTION OR ERRORS IN FUNCTIONING. The provisions under this Section 6 shall survive any termination of this Agreement.

7. **Limitation of Liability; Indemnification.** The Agency agrees that CARFAX's liability hereunder for damages, regardless of the form of action, shall not exceed one thousand dollars (\$1,000.00). This shall be the Agency's exclusive remedy. IN NO EVENT WILL CARFAX BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, OR ANY THIRD PARTY CLAIM OR DEMAND) EVEN IF CARFAX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CARFAX shall indemnify, defend and hold harmless the County of Los Angeles, its Special Districts, elected and appointed officers, employees, agents and volunteers from and against any and all liability arising from or related to third party demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from CARFAX's use of the Data in a manner not authorized by Agency hereunder. Except to the extent prohibited by applicable law, the Agency will indemnify and hold CARFAX, its affiliates and their respective directors, officers, employees and agents harmless from any third party demands, claims, actions, fees, costs or expenses, suits or damages, either direct or indirect, arising out of the Agency's use of the VHS, a VHS report, the Investigative Tools, the Shared Reports, or the Search Results for any purpose other than the Permitted Use or in a manner otherwise prohibited by this Agreement. The provisions under this Section 7 shall survive any termination of this Agreement.

8. **Governing Law; Jurisdiction.** This Agreement, and any claim, controversy, or dispute arising under or related to this Agreement or the relationship between the parties and/or the interpretation and enforcement of the rights and duties of the parties will be resolved in accordance with the laws of the State of California, without regard to its conflict of laws principles. The parties agree and consent to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agree and consent that venue of any action brought hereunder shall be exclusively in the County of Los Angeles. The provisions under this Section 8 shall survive any termination of this Agreement.

9. Public Records Act and Discovery. The Agency must comply with the public records laws of the State of California. Upon a California Public Records Act request pertaining to this Agreement, the Shared Reports, the VHS reports, or information derived from the Investigative Tools, the Shared Reports, or the VHS reports, used by the Agency in its criminal investigations, the Agency must comply with the California Public Records Act. The Agency must also comply with all litigation discovery rules related to the Shared Reports, the VHS reports, or information derived from the Investigative Tools, the Shared Reports, or the VHS Reports, used by the Agency in its law enforcement investigations. CARFAX understands and agrees that all Shared Reports, VHS reports, and information derived from the Investigative Tools, the Shared Reports, or the VHS reports, used by the Agency in its law enforcement investigations are public records and subject to disclosure by the Agency pursuant to applicable law. The provisions under this Section 9 shall survive any termination of this Agreement.

10. Entire Agreement; Modification; Assignment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and terminates and supersedes all previous agreements, whether oral or written, relating to the same subject matter. CARFAX reserves the right to modify this Agreement upon written notice to the Agency. Notwithstanding the foregoing, amendments, addenda or other agreements between the Agency and CARFAX, executed by an authorized CARFAX representative and not specifically terminated, shall supersede any inconsistent provision of this Agreement. The Agency shall not assign this Agreement without the prior written consent of CARFAX.